(3)

Supreme Court, U.S.
FILED
AUG 23 2004
OFFICE OF THE CLERK

No. 03-1496

IN THE

SUPREME COURT OF THE UNITED STATES

Meredith T. Raney, Jr.,

Petitioner,

v.

Allstate Insurance Company, Allstate Floridian Insurance Company, Ocala Women's Center, Inc., Aware Woman Center For Choice, Inc., Edward W. Windle, Jr., Patricia Baird Windle, James S. Pendergraft, M.D., and Manhattan Magnolia, Corp.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

Christopher F. Sapp
Counsel of Record
1323 Wilderness Lane
Titusville, Fl 32796
(321) 268-8758

Intervening matters not available at the time Meredith T. Raney, Jr. filed his petition for writ of certiorari are now presented to the Supreme Court in accord with Rule 15 of the United States Supreme Court Rules.

These matters include excerpts from the 9/11 Commission Report, a Time magazine article, and correspondence concerning an Eleventh Circuit order. There are also excerpts from a series of lawsuits against Mr. Raney wherein the Respondents sought to extort from him vast amounts of money and property.

The Eleventh Circuit has entered a decision in the *Raney v. Allstate* appeal which now necessitates a restatement of the question before the Supreme Court in accord with Rule 12 of the United States Supreme Court Rules. Thus the issue is amended accordingly.

AMENDED QUESTION PRESENTED

Since the potential for historic embarrassment to a United States Court of Appeals for its unwitting role in the September 11 attacks precludes even the appearance of impartiality by that Court in the present appeal, should the United States Supreme Court review this case and the appellate decision therein ?

TABLE OF CONTENTS

Amended Question Presented ..... *i*

Table of Contents ..... *ii*

New Matters Concerning Granting the Writ . 1

Because the potential for historic embarrassment to the United States Court of Appeals for its unwitting role in the September 11 attacks precludes even the appearance of impartiality by that Court in the present appeal, the United States Supreme Court should review this case and the appellate decision therein.

Conclusion 3

Appendix A 1a

Decision of the United States Court of Appeals for the Eleventh Circuit, affirming the United States District Court for the Middle District of Florida, filed May 24, 2004.

Petitioner, Meredith T. Raney, Jr., respectfully requests that a writ of certiorari be issued to review this case and the appellate decision in the United States Court of Appeals for the Eleventh Circuit.

NEW MATTERS

Because the potential for historic embarrassment to the United States Court of Appeals for its unwitting role in the September 11 attacks precludes even the appearance of impartiality by that Court in the present appeal, the United States Supreme Court should review this case and the appellate decision therein.

The new matters shown in Subject [A] of the Selected Exhibits to this Supplemental Brief enhance the concern stated in Mr. Raney's original petition for writ of certiorari about the inadvertent help possibly supplied to the 9/11 terrorists by the Eleventh Circuit.

In Subject [B] of the Selected Exhibits to the Supplemental Brief are found recent materials indicating an improper effort by Eleventh Circuit judges to obstruct this case by using The Florida Bar as a goon squad to intimidate Mr. Raney's attorney.

While the excerpts found in Subject [C] of the Selected Exhibits showing a series of extortionate lawsuits brought against Mr. Raney as part of the Allstate RICO conspiracy are not themselves of recent origin, they relate to the decision of the United States Court of Appeals which was entered on May 24, 2004, following the filing of the original petition for writ of certiorari in this case.

That decision at the Eleventh Circuit, coupled with the other recent revelations, have been the basis for filing this Supplemental Brief under Rule 15 of the United States

Supreme Court Rules and the broadened review sought in accord with Rule 12 of the United States Supreme Court Rules.

Mr. Raney has known that he would not receive justice in the Eleventh Circuit, even though he is able to plead and prove his RICO case against the Respondents. Predictably, the appellate court has misstated facts and, by judicial *fiat*, rewritten the laws of Florida in its decision affirming the lower court which had dismissed the Raney complaint with prejudice.

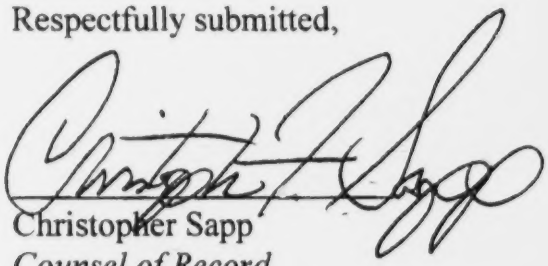
Because of the 9/11 pall which hangs over the Eleventh Circuit, Mr. Raney's prophecy of severe bias against him came to be. One way or another, there was no question about the outcome of the Raney appeal in the Eleventh Circuit: it was doomed from the start.

The bow at the end of a Broadway play belongs to the actors. Yet those that set the stage also receive credit for their part in the performance. While Atta and Al Shehhi and the others deliberately assaulted and killed thousands of innocent Americans, those who helped these terrorists will share in their awful stigma. This is true even where the help was inadvertent.

CONCLUSION

There can be no justice in this case without the issuance of a writ of certiorari.

Respectfully submitted,



Christopher Sapp
Counsel of Record
1323 Wilderness Lane
Titusville, Florida 32796
(321) 268-8758
Member of the Bar of the
United States Supreme Court

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-16383
Non-Argument Calendar

D.C. Docket No. 02-00372- CV-OC-10-GRJ

Meredith T. Raney, Jr

Plaintiff-Appellant,

versus

Allstate Insurance Company,
Allstate Floridian Insurance Company,
Ocala Women's Center, Inc.,
Aware Woman Center For Choice, Inc.,
Edward W. Windle, Jr., et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(MAY 24, 2004)

Before CARNES, BARKETT, and HULL, Circuit Judges.

PER CURIAM:

Meredith Raney appeals the district court dismissal of his complaint for extortion under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et. seq. Raney charged several abortion providers and his own insurance company with a conspiracy to extort money from him through the filing of malicious lawsuits. Because the filing of a lawsuit may not state a claim for extortion under the federal RICO statutes, we affirm the district court dismissal of Raney's complaint under Federal Rule of Procedure 12 (b)(6).

For several years, Raney has actively opposed the provision of abortion in Florida by engaging in numerous activities near the entrances to abortion clinics. See, e.g., Raney v. Aware Woman Ctr. For Choice, Inc., 224 F.3d 1266 (11th Cir. 2000). In 1998 and 1999, three abortion clinics filed separate lawsuits against Raney, accusing him of violating the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248, as well as various other statuary and common law injuries. In response to these lawsuits, Raney's homeowner's policy insurer, Allstate, issued a reservation of rights letter outlining its position on coverage. Allstate also filed a declaratory judgment action seeking to establish that it owed no duty to defend Raney .[1] Each of these lawsuits was subsequently dismissed without prejudice, and Allstate withdrew its declaratory judgment suit.

Raney filed suit in federal court charging each of the clinics and his insurance company with malicious prosecution, extortion and conspiracy to destroy him and his business. According to Raney, Allstate signaled its complicity in the

[1] This is common practice in Florida state courts. See, e.g.. State Farm Fire & Cas. Co. v. Cronk, 530 So. 2d 445 (Fla, Dist. Ct. App. 1988).

baseless suits by issuing a reservation a reservation of rights letter rather than denying coverage outright. Raney argued that Allstate benefits from abortion by avoiding healthcare claims it would otherwise pay over the course of a child's life. The defendants responded that Raney had failed to state a claim because, as a matter of law, the filing of a lawsuit cannot form a predicate act under RICO. The magistrate judge recommended granting the defendants' motion, and the district court adopted that recommendation.

We review de novo the decision to dismiss a complaint for failure to state a claim upon which relief may be granted. Lowell v. Am. Cyanamid Co., 177 F.3d 1228, 1229 (11th Cir. 1999). We accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff. Roberts v. Fla. Power & Light Co., 146 F.3d 1305, 1307 (11th Cir. 1998). In order to survive a motion to dismiss in a civil RICO case, a plaintiff must show a "pattern of racketeering activity" by alleging that the defendants committed two qualifying predicate acts. Republic of Panama v. BCCI Holdings, 119 F.3d 935, 948-49 (11th Cir. 1997). This requires that a plaintiff allege facts that support each statutory element of a violation of one of the state or federal laws described in 18 U.S.C. § 1961(1).

In this case, Raney's RICO claim depends upon his ability to show a violation of the Hobbs Act, which bars interference in interstate commerce by means of extortion. See 18 U.S.C. § 1951. Although Raney alleges various specific complaints including mail fraud, extortion, and malicious prosecution, all of these relate to the alleged conspiracy to extort money through the filing of malicious lawsuits. We agree with the district court that Raney's argument is foreclosed by our recent decision in United States v. Pendergraft, 297 F.3d 1198 (11th Cir. 2002). In Pendergraft, the defendants allegedly threatened to sue a county government by falsely claiming that the County

Chairman had threatened violence against their abortion clinic. We held that neither the threat to litigate nor the fabrication of evidence behind the lawsuit made the action "wrongful" within the meaning of 18 U.S.C. § 1951 and therefore barred by this decision.[2]

Raney argues that Pendergraft applies only threats of litigation, rather than actual litigation. We reject this argument. Although Pendergraft involved only threatened litigation, the reasoning in that opinion applies equally to litigation that has already commenced. We noted that courts possess adequate procedures to distinguish valid claims from invalid claims and held that Congress did not intend to punish citizens merely for accessing the legal system. Id. At 1206-07. We found ourselves "troubled by *any* use of this federal criminal statute to punish civil litigants." Id. At 1207 (emphasis in original). We noted that "allowing litigants to be charged with extortion would open yet another collateral way for litigants to attack one another." Id. We also expressed

---

[2] We also reject any potential state-law extortion or mail fraud claims as predicate acts in this case. Neither Raney's complaint nor his appellate briefs identify any Florida statute that would give rise to a federal RICO violation. Moreover, in order for a state extortion offense to qualify as a predicate act under the federal RICO statute, the conduct must be capable of being generically classified as extortionate: that is, "obtaining something of value from another with his consent induced by the wrongful use of force, fear or threats." Scheidler v. Nat'l Org. For Women, Inc., 537 U.S. 393, 409-410 (2003) (quoting the Model Penal Code). In light of our decision in Pendergraft, we no doubt that the filinf of a lawsuit could ever be "wrongful" for the purposes of RICO. See also L.S. Joseph Co. v. J. Lauritzen A/S, 751 F.2d 265, 267-68 (8th Cir. 1984) (threats to sue, even if groundless or in bad faith, may be tortious under state law but do not come within the federal extortion statute).

Similarly, we held in Pendergraft that, absent an intent to deceive the victim, the " mailing of litigation documents, even perjurious ones, did not violate the mail-fraud statute." 297 F.3d at 1209. Raney does not allege any intent to deceive him, and he therefore cannot extablish mail fraud as a predicate act for his RICO claims

concern about transforming every state-law malicious prosecution action into a federal crime. Id. At 1207-08. All of these concerns apply to actual litigation with added force. Furthermore, other courts have explicitly applied this reasoning to litigation that has already been filed. See, e.g., Deck v. Engineered Laminates, 349 F.3d 1253, 1258 (10th Cir. 2003) (citing Pendergraft and rejecting "meritless litigation" as a predicate act under RICO when the suit had actually been filed). [3]

We also reject Raney's argument that the district court should have exercised supplemental jurisdiction over the remaining state-law claims. The decision to exercise supplemental jurisdiction over pendant state claims rests within the discretion of the district court. Mergens v. Dreyfoos, 166 F. 3d 1114, 1119 (11th Cir. 1999). We have encouraged district courts to dismiss any remaining claims when, as here, the federal claims have been dismissed prior to trial. L.A. Draper & Son v. Wheelabrator-Frye, Inc., 735 F.2d 414, 428 (11th Cir. 1984). Nothing in this record suggests the district court abused its discretion in declining to exercise jurisdiction over the remaining claims.

AFFIRMED.

---

[3] The sole case cited by Raney, Florida Evergreen Foliage v. Dupont, 135 F. Supp. 2d 1271 (S.D. Fla.. 2001), involved a pattern of witness intimidation, fraudulent depositions, and concealment of data and documents, and, in any case, predated Pendergraft.